SI TOH FOK TIAK trading as CHOP WING LOONG v. CHOP SWEE KEE & CO.

[A. C. J. (Abbott, J.) February 20, 1953]

[Malacca — Civil Appeal No. 3 of 1952]

Evidence — Leave to adduce fresh evidence — Principle on which leave refused.

The principle on which leave to adduce fresh evidence must be refused is where, at the trial, it could have been produced with the exercise of proper diligence. In this case the application to adduce fresh evidence is granted. Fresh trial ordered.

APPLICATION.

C. S. Jayaswal for the appellant.

W. H. Sault for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an application, preliminary to the argument of the appeal, for leave to adduce fresh evidence.

The plaintiff (the appellant) sued the defendant firm (the respondents) for a sum of money alleged to be due in respect of sewing machines. It was the case for the defendant firm that the sewing machines had been sold to one Hong Boon Pin, who was the manager of the defendant firm, in his personal capacity — that the transaction was not part of the defendant firm's business. Hong Boon Pin gave evidence for the defence and said that the defendant firm was not a party to the sale. The President of the Sessions Court in Malacca accepted the defence and gave judgment against the plaintiff.

The application for leave to adduce fresh evidence, one witness, is supported by affidavit — "It was never anticipated that the evidence of Ismail Hassan could be forthcoming in the lower court". There is an affidavit sworn by Ismail Hassan which, if true, shows that, at the material time he, as a customer of the defendant firm, bought a sewing machine and was given a receipt on a paper bearing the defendant firm's name and address in print upon it and also bearing the defendant firm's name on a rubber stamp. This, if true, might well seem to show that the defendant firm was dealing with this sewing machine in the ordinary course of its business.

The principle upon which leave to adduce fresh evidence must be refused is where, at the trial, it could have been produced with the exercise of proper diligence. (*Annual Practice*, 1952, page 1252). In this case, it is quite clear that the existence of such evidence was unknown otherwise it certainly would have been called. It would certainly have required something more than proper diligence to have discovered it. I hold that the application must succeed.

The next question is how best the matter should proceed from here. I do not consider that the case is one which could best be determined in this Court either upon affidavits or upon oral evidence. There was an attack upon the credibility of witnesses whose evidence has already been heard. To determine the case here would be to try the case piecemeal. The proper course is to order a fresh trial and this I do. At the same time I order that the costs of the whole case up to and including to-day shall be awarded to the successful party in the fresh proceedings.

Fresh trial ordered.

PUBLIC PROSECUTOR v. NGOW KENG JEE.

[A. Cr. J. (Abbott, J.) December 3, 1952]

[Malacca — Criminal Appeal No. 20 of 1952]

Emergency (Registration Areas) Regulations, 1948, regs. 11 and 18(2) — Identity Card — Erasure of entry made by person without authority.

This case disposes of the question whether a holder of an identity card who had erased an entry on it which had been entered by a person without authority to enter it, can be guilty of an offence under regulation 18(2) of the Emergency (Registration Areas) Regulations 1948.

Held: under regulation 11 no person may make any erasure in an identity card except a Registration Officer or his duly appointed agent, and it therefore makes no difference whether the entry which had been erased was made by a person with or without authority.

CRIMINAL APPEAL.

D. C. Jackson (D.P.P.) for the Public Prosecutor.

C. S. Jayaswal for the respondent.

Abbott, J. : — The respondent was charged with knowingly having in his possession an identity card containing an unauthorised erasure contrary to regulation 18(2) of the Emergency (Registration Areas) Regulations, 1948. This Court has seen the identity card and it is quite clear that a certain area of it had been roughly rubbed out. There was evidence in the lower court that the entry that was erased was an entry made by the then Chief Police Officer to the effect that the respondent had been a detainee. The learned President acquitted the respondent because he held, and rightly held, that the entry which had been made upon the identity card was made wrongly and without lawful authority. It is not necessary, for the purposes of this judgment, to go into that. But the learned President held that since the entry had been made by a person without authority to make